



POLICE DEPARTMENT

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In the Matter of the Disciplinary Proceedings	:
- against -	: FINAL
Police Officer Peter Ciollo	: ORDER
Tax Registry No. 940009	: OF
Military & Extended Leave Desk	: DISMISSAL
-----X	

Police Officer Peter Ciollo, Tax Registry No. 940009, Shield No. 7834, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2013-10065, as set forth on form P.D. 468-121, dated August 26, 2014, and after a review of the entire record, Respondent has been found Guilty of Specifications 1, 2, 3, 4, 5, 8, 9, 10 and 11 and having pled Guilty to Specification 7, is found Guilty. Respondent is found Not Guilty of Specification 6.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Peter Ciollo from the Police Service of the City of New York.


WILLIAM J. BRATTON
POLICE COMMISSIONER

EFFECTIVE: On November 26, 2014 @0001 HRS.



POLICE DEPARTMENT

November 12, 2014

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In the Matter of the Charges and Specifications : Case No.
- against - : 2013-10065
Police Officer Peter Ciollo :
Tax Registry No. 940009 :
Military & Extended Leave Desk :
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Rosemarie Maldonado
Deputy Commissioner Trials

A P P E A R A N C E:

For the Department: Scott Rosenberg, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Stuart London, Esq.
Worth, Longworth & London, LLP
111 John Street Suite 640
New York, NY 10038

To:

HONORABLE WILLIAM J. BRATTON
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before the Court on September 23, and September 24, 2014, charged with the following:

1. Said Police Officer Peter Ciollo, assigned to the 120 Precinct, while off-duty, on or about and between July 4, 2013 and July 5, 2013, in Richmond County, being twenty-one years old or more, did attempt to engage in sexual intercourse with a person less than seventeen years of age, to wit: Minor A (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
N.Y.S. Penal Law Section 110.00/130.25 (2) – ATTEMPTED RAPE IN THE
THIRD DEGREE

2. Said Police Officer Peter Ciollo, assigned to the 120 Precinct, while off-duty, on or about and between July 4, 2013 and July 5, 2013, in Richmond County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Ciollo allowed a sixteen year old minor, Minor A that had recently consumed alcohol to operate a motor vehicle. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
ENDANGERING THE WELFARE OF A
CHILD

3. Said Police Officer Peter Ciollo, assigned to the 120 Precinct, while off-duty, on or about and between July 4, 2013 and July 5, 2013, in Richmond County, did subject a person less than seventeen years of age, Minor A to sexual contact without the latter's consent, to wit: Police Officer Ciollo touched Minor A's vaginal area and/or inserted his finger(s) into Minor A's vagina. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
NYS Penal Law Section 130.55 – SEXUAL ABUSE IN THE THIRD DEGREE

4. Said Police Officer Peter Ciollo, assigned to the 120 Precinct, while off-duty, on or about and between July 4, 2013 and July 5, 2013, in Richmond County, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that he gave an alcoholic beverage to a person less than twenty-one years of age, to wit: Minor A (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
NYS Penal Law Section 260.20 (2) – UNLAWFULLY DEALING WITH A
CHILD 1ST DEGREE

5. Said Police Officer Peter Ciollo, assigned to the 120 Precinct, while off-duty, on or about and between July 4, 2013 and July 5, 2013, in Richmond County, wrongfully engaged in conduct prejudicial to the good order, efficiency or discipline of the

Department, to wit: Police Officer Ciollo displayed pornographic images to Minor A a sixteen year old child. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT

PROHIBITED CONDUCT

6. Said Police Officer Peter Ciollo, assigned to the 120 Precinct, while off-duty, on or about and between July 4, 2013 and July 5, 2013, in Richmond County, did subject another person less than seventeen years of age to sexual contact without the latter's consent, to wit: Police Officer Ciollo placed Minor A's hand on his penis and/or on his penis area. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

NYS Penal Law Section 130.55 – SEXUAL ABUSE IN THE THIRD DEGREE

7. Said Police Officer Peter Ciollo, assigned to the 120 Precinct, on or about and between July 4, 2013 and July 5, 2013, was out of residence while on Sick Report without the permission of a District Surgeon or Sick Desk supervisor. (*As amended*)

P.G. 205-01, Page 2, Paragraph 4 REPORTING SICK

Operations Order 22, Issued 03-31-11 – PILOT PROGRAM – HOME

CONFINEMENT WHILE ON SICK
LEAVE

8. Said Police Officer Peter Ciollo, assigned to the 120 Precinct, on or about and between March 12, 2013 and July 4, 2013, failed to provide the 120 Precinct Operations Coordinator and /or Commanding Officer with his current physical home address.

P.G. 203-18, Page 1, Paragraph 2 & Note – RESIDENCY REQUIREMENTS

9. Said Police Officer Peter Ciollo, while assigned to the 120 Precinct, while off-duty, on or about and between July 4, 2013 and July 5, 2013, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Ciollo slapped and/or touched Minor B, a sixteen year old child's, buttocks. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT

10. Said Police Officer Peter Ciollo, while assigned to the 120 Precinct, while off-duty, on or about and between July 4, 2013 and July 5, 2013, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Ciollo threatened to inform a sixteen year old child's, Minor A, parent of said child's nipple piercing unless said child displayed her breast with the nipple piercing to him. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

11. Said Police Officer Peter Ciollo, while assigned to the 120 Precinct, while off-duty, on or about and between July 4, 2013 and July 5, 2013, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Ciollo placed Minor A, a sixteen year old child, against the wall, pulled down and/or unzipped her shirt and asked said child if he could bite her breasts. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

The Department was represented by Scott Rosenberg, Esq., Department Advocate's Office, and Respondent was represented by Stuart London, Esq., Worth, Longworth & London, LLP. Respondent, through his counsel, entered a plea of Not Guilty to Specifications 1, 2, 3, 4, 5, 6, 8, 9, 10 and 11. Respondent pled Guilty to Specification 7. The Department called Minor A, Sergeant Aleksandr Zektser, Detective John Dalto, Sergeant John Martinez, Sergeant Leon Lian and Minor B as witnesses. Respondent called Toni Ann Ciollo as a witness and he testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

Respondent pled Guilty to Specification 7, being out of residence while on sick leave. After evaluating the testimony and evidence presented at the hearing, and assessing the credibility of the witnesses, this tribunal finds Respondent Guilty of the misconduct set forth in Specifications 1, 2, 3, 4, 5, 8, 9, 10 and 11. This tribunal finds Respondent Not Guilty of the misconduct set forth in Specification 6.

FINDINGS AND ANALYSIS

The resolution of this case turns purely and simply on questions of credibility. Only Respondent and 16 year-old Minor A know with certainty what actually occurred on the second floor of his residence between 0100 and 0700 hours on July 5, 2013. Yet the accounts of their interactions during the early morning hours that day are entirely different. Minor A claims that Respondent behaved inappropriately, gave her alcohol, made sexual advances and had unlawful sexual contact with her. Respondent asserts that he was a Good Samaritan who helped a drunk teenager who then propositioned him and that he showed restraint by rebuffing her advances. Thus, it is left to this tribunal to try to sort out which version of events is closest to the truth.

The following facts are undisputed. During the late afternoon of July 4, 2013, Respondent and his wife, Toni Ann Ciollo, attended a party at a friend's house. The couple left the gathering between 2030 and 2100 hours because Mrs. Ciollo had to prepare for her 2300 to 0700 shift at [REDACTED] Hospital. Mrs. Ciollo showered and took a nap before the start of her shift. (Tr. 307-308, 336)

That same evening, [REDACTED] 16-year-old [REDACTED], Minor A took a bus with Minor B, a childhood friend, to meet their friend [REDACTED]. The girls were going to [REDACTED] house because her parents were not there and the minors wanted to consume alcohol. Sometime that evening, Respondent and Minor A communicated with each other via phone or text. She then left her friends at [REDACTED] house to meet Respondent who drove to [REDACTED] and [REDACTED] Avenue to meet her. They were alone together for about fifteen minutes in his car. The purpose of this rendezvous is disputed, but it is

uncontested that thereafter Minor A returned to [REDACTED] house and Respondent returned to his friend's party. Over the course of the next few hours Minor A and her friends consumed a significant amount of alcohol. By all accounts, Minor A became quite intoxicated after having consumed 40 ounces of beer in addition to shots of alcohol. (Tr. 25-27, 68, 71-72, 80-81, 206, 209, 210, 213, 307-308, 336-339)

At around midnight, Minor A and Minor B were unsuccessful in their attempt to get a ride home and decided to walk to the train station. Minor A and Minor B began a verbal argument that escalated into a physical altercation in which Minor A hit her friend with her bag. Minor B described Minor A as "very emotional" and the "drunkest [she] had seen [her]." (Tr. 27-28, 82-85, 212-214, 246-247, 274-275) Minor A was intoxicated and in this highly emotional state when she contacted [REDACTED] [REDACTED] to ask for a ride home. [REDACTED] knew that Minor A had been drinking and that she had fought with her friend.

She called Respondent for assistance [REDACTED]

[REDACTED] At approximately 12:30 a.m., Respondent picked up Minor A and Minor B at the train station and drove them to his home. (Tr. 28, 214, 312-313, 339-341)

Neither Respondent nor [REDACTED] contacted Minor A's parents to let them know their underage daughter was drunk in their home. (Tr. 372)

Minor A was still intoxicated when she arrived at Respondent's residence. She went upstairs [REDACTED] to retrieve sleepwear for herself and Minor B. Both girls changed. Minor B eventually fell asleep on the living room couch on the first floor. Sometime during the night she saw Minor A and asked her to please stay with her on the couch because she was not feeling well. As she was going up the stairs, Minor A said "no" and told her to "just stay down here." (Tr. 32, 224)

Mrs. Ciollo returned from work at approximately 0715 hours. She saw Minor B sleeping on the couch and went upstairs. In her bedroom she saw both Respondent and MinorA sleeping in her bed. Mrs. Ciollo started to scream, told Minor A to get up and angrily asked what she was doing with her husband. Both responded that "nothing happened." MinorA went downstairs to the couch with Minor B and Respondent fell asleep. Mrs. Ciollo went to the computer to pay a bill, then went downstairs and talked to the girls and eventually went to bed. They all woke up at about 11:30. Respondent got food for them from Wendy's. (Tr. 39-40, 226-228, 315, 322, 354-355) While Respondent was out of the house he had a text message exchange with Minor A in which they both agree to "no more drinking" and Respondent thanks Minor A when she agrees that "we are good." (Dep. Ex. 4) After they ate, Respondent drove the girls home. (Tr. 229-230)

Minor B told her sister that Respondent had behaved inappropriately. Minor B's sister relayed this to their father a retired NYPD officer. Minor B's father reported Respondent to the Internal Affairs Bureau (Tr. 230) The matter was referred to the Staten Island District Attorney. As part of that District Attorney investigation, controlled calls between Respondent and MinorA were recorded on July 9 and July 10, 2013. During these conversations, MinorA told Respondent that she did not "remember anything" about what occurred "that night" and expressed concern that she had "betrayed [REDACTED]" (Tr. 106-107; Dep. Ex. 2) Although Respondent emphatically stated that they did not have sex, he persisted in admonishing Minor A not to talk to anyone about "that night," that [REDACTED] would be "done" if this got out and that "everybody has deep dark secrets and they die with it." (Tr. 374; Dep. Ex. 3) MinorA did not cooperate with the criminal prosecution of the case. Respondent was subsequently found guilty of disorderly

conduct. (Resp. Ex. C)

This tribunal is being asked to assess Minor A's account that Respondent engaged in serious misconduct during the evening hours of July 4, 2013 and the early morning hours of July 5, 2013. Specifically, Minor A claims that Respondent:

- Gave her alcoholic beverages to consume
- Allowed her to operate a motor vehicle knowing that she was intoxicated
- Slapped and/or touched Minor B's, buttocks.
- Showed her pornographic images
- Threatened to inform her father that she had nipple piercing unless she displayed her breast with the nipple piercing to him.
- Pulled down and/or unzipped her shirt and asked to bite her breasts.
- Attempted to engage in sexual intercourse
- Touched her vaginal area and/or inserted his finger(s) into her vagina

The details of her account are as follows. Minor A testified that on the night in question, Respondent complied with her request to buy her alcohol. He insisted that she meet him alone and agreed to pick her up in his car at about 7:00 pm on the corner of [REDACTED] and [REDACTED] Avenue. He drove to two delis where he bought beer and a sweet alcoholic beverage for her to consume with her friends. He dropped her off at [REDACTED] house and promised to drive her home later that night. (Tr. 25-26) She texted Respondent to get a ride at or around midnight, but he did not respond. Respondent picked her and Minor B up shortly after Minor A called [REDACTED] to ask for help. They started to drive to his residence at about 12:30 a.m. On the way, Respondent commented that if Minor A was not [REDACTED] he would make her stand outside the sunroof with her top off. She thought this comment was "weird," but chose to ignore it. Respondent then drove to the Staten Island Mall and allowed Minor A to drive in the parking lot for a few minutes, even though she did not have a permit and was intoxicated. (Tr. 28-30, 86-88)

At Respondent's residence, he gave her wine and shots of vodka from a frozen

water bottle. She continued to drink throughout the night and admits to consuming a whole bottle of wine by herself. She did not recall if Respondent had shots of vodka. While downstairs, Respondent suggested that she "invite [her] friend over from Instagram with the big boobs." (Tr. 31-32, 88, 90, 92) Minor B was not feeling well due in part to an allergic reaction to Respondent's dog. She went upstairs with Respondent to get an antihistamine, returned to the living room and lied on the couch to get some asleep. While she was on the couch, Minor A saw Respondent smack Minor B on her buttocks. (Tr. 32)

Minor A testified that she went upstairs with Respondent to his bedroom where they talked about school, piercings and tattoos. They proceeded to a second upstairs room where Respondent talked about "[REDACTED] porno" and played porn on the computer for a minute or two. She asked him to stop because she thought it was "weird." Minor A unsuccessfully attempted to access her Twitter account on Respondent's computer. She also looked in the closet for clothes. During the 15 minutes they spent in that room, Respondent tried to unzip her shirt because he wanted to see her nipple piercings. He threatened to tell her father about them if she did not comply, pushed her against the wall, pulled her sweater and asked to bite her breasts. She wanted him to stop and he bit her face. She then left to vomit in the bathroom. (Tr. 33-36)

When she returned to his bedroom, Respondent took her pants off, rubbed her vagina with his penis, tried to put her on top of him, and solicited intercourse as he said "creepy things." Respondent did not have pants or underwear on at this point. He kissed her and "put his fingers in [her] vagina" a "couple" of times. Afterwards, she was wearing his gym shorts and he was in his underwear. She does not remember how she

got into those shorts. He wanted to have intercourse but she said no. She recalls that his fingers were in her vagina and then Respondent's wife came in at 0700 hours. As his wife screamed, Minor A ran down the stairs to the living room. She says she was too scared to tell [REDACTED] the truth. (Tr. 36-39) It should be noted that Minor A did not testify that Respondent placed her hand on his penis and/or on his penis area as set forth in Specification 6.

Respondent denies any misconduct. He acknowledges that he met Minor A alone on the corner of [REDACTED] and [REDACTED] Avenue, but says he did so to discuss Minor A's fight with Minor B and not to purchase alcohol for the minors. (Tr. 337-338)

[REDACTED] He met the girls at the train station and says he took them straight to his residence and did not stop at the mall to let her drive. (Tr. 340-343) Once at the house, he told the girls to sleep on the downstairs couch. When he noticed that his dog had made a mess, he cleaned it while Minor A went to [REDACTED] get clothes to sleep in for herself and her friend. (Tr. 345-347) After finishing with the dog, he went upstairs, changed and went to sleep wearing shorts and a t-shirt. (Tr. 349)

Respondent testified that Minor A woke him up in the middle of the night by putting her arm around him and saying, "Come on, come on." He brushed her off saying, "No, [REDACTED] you are 16." She smiled and responded, "I'm 17." He pushed her away and she backed up. When Minor A said she "didn't like the material of the clothing she had on" he got up, opened the drawer, pulled out a pair of shorts and gave them to her. (Tr. 352-353) She stood there a few more minutes while they spoke about his wife and how they met and that they were going to start a family. Minor A "threw

up” and said “I’m jealous over you and your wife” and left the bedroom. He woke up to his wife screaming, “What are you doing in bed with my husband.” That is when he realized that Minor A had slipped into bed with him. He assured his wife that “nothing [had] happened” and fell back asleep. (Tr. 348-350, 353-355)

Few things are more difficult, yet more fundamental to the role of a trier of fact, than the task of attempting to reconstruct the most probable nature of a past event on the basis of conflicting testimonial accounts. While the law creates the framework within which such a task is accomplished, the ultimate determination of which account to accept in such cases depends almost solely on an assessment of witness credibility. That assessment remains the exclusive province of the fact finder.

In making such an assessment, the trier of fact should consider a wide range of factors, including but not limited to, witness demeanor, corroborating evidence, the consistency of a witness' account both at trial and over time, the degree to which the witness is interested in the outcome of a case, the potential prejudice or bias of the witness, and perhaps most basically the degree to which the witness' account is logical and comports with common sense and general human experience.

This record contains many facts that weigh against the credibility of the complaining witness. There is no doubt that Minor A is a troubled teenager who has a difficult relationship with her parents, one of whom suffers from mental illness. She abuses alcohol and by her own admission smokes pot almost daily. Many of her social media posts raise concerns about depression and possible suicidal thoughts. In addition, she has consented to the posting of a scantily clad photo of herself on a social media site and believes that the use of the word “cunt” in her screen name is a joke. Specifically, on

the night in question, Minor A unflinchingly admitted to drinking 40 ounces of beer, shots of vodka and an entire bottle of wine -- certainly enough alcohol to raise serious questions about her testimonial accuracy. Some of her behavior, including part of a text message exchange with Respondent and pointed comments made during recorded calls, raise questions about her behavior that night. Moreover, Minor A volunteered in court that she had hits from a bong the evening before testifying at this tribunal.

This evidence certainly creates doubt about the truthfulness of Minor A's account. In fact, if these challenges to her character and reliability were standing alone, it would be straightforward to dismiss her allegations as a fabrication. This tribunal, however, must weigh this evidence against the entire record. After carefully considering the conflicting accounts, this tribunal concludes that her version of the disputed portion of the incident was the more logical one under the circumstances.

In sum and substance, at trial Respondent claimed that he was a Good Samaritan who, [REDACTED] helped [] troubled Minor A who had had too much to drink. He insisted that he did nothing wrong. The preponderance of the credible evidence, however, including some of his own statements, belie that claim. There were four key factors that independently corroborated and supported Minor A's version of events. The most compelling evidence consisted of Respondent's July 5 text messages to Minor A, the inculpatory statements Respondent made to Minor A during the two controlled calls recorded by the District Attorney's Office, Respondent's exited utterances at the time of his arrest and forensic evidence that a pornography website was accessed on Respondent's computer during the early hours of July 5, 2013. This tribunal has listened numerous times to the recordings of the approximately

four minute controlled call recorded on July 9, 2013 and the approximately eleven minute controlled call recorded on July 10, 2013. (Dep. Exs. 2, 3) Respondent's purported scenario, however, is not consistent with the tone and substance of his taped conversations with Minor A.

If Respondent's claim, that he only ward off the advances of a drunken teenager, was true, he would have distanced himself from Minor A and certainly would have discouraged any private meetings with her. Instead, Respondent seems apprehensive and during both calls offers to pick her up alone in his car to talk or take her to the mall. This defies logic unless he is trying to keep her in the fold to hide his complicity.

Throughout both calls, Respondent insists, with urgency, that Minor A not speak or trust anyone with their "deep dark secrets." [REDACTED]

[REDACTED]

[REDACTED] In this case, however, Respondent's wife already knew that her husband was in bed with Minor A, having found them in bed together. Furthermore, Minor B also knew this because she heard Mrs. Ciollo scream when she walked into her bedroom.

Respondent's insistence that Minor A not speak to Mrs. Ciollo or Minor B, who already knew that they were in bed together, implies that the "deep dark secrets" were much more than him pushing drunk underage Minor A away. His imploring tone suggests that he engaged in the sexual misconduct alleged by Minor A.

Respondent's persistent warning of the catastrophic consequences that would befall [REDACTED] if the "deep dark secrets" come to light further suggests Respondent's complicity. He says over and over again that they will lose everything if

the truth comes out. Not only would his wife leave if she knew the real truth, that truth would destroy his "entire" family [REDACTED] These persistent admonitions do not make sense within the context of his story. The following excerpts from the second controlled call are particularly disturbing and insightful:

[REDACTED]
[REDACTED]
Speak to me before you speak to anybody, because look at the effect ...
Everybody's life is ruined. Everybody does stupid things in their life.
Unfortunately this was beyond stupid....
We die with this. Everybody has deep dark secrets and they die with it. My
suggestion instead, we never speak about that night again...
July 4 does not exist... It doesn't exist because the chain of events that's going to
happen, it's like if [REDACTED] were in a plane crash
and were dead, that's exactly what ... it's going to be like...
But for a dark secret that does not need to come out. To come out, it's not worth
it. (Tr. 374; Dep. Ex. 3)

Given what was already known by his wife, it stretches credulity that these dire consequences would result from her finding out that he pushed Minor A away that night.

[REDACTED]
[REDACTED]
It is also important to underscore that throughout the recorded conversations, Respondent is concerned about his own behavior "that night." He repeats that he does not want Minor A to "think of [him] like that" and at one point assures her that "That's not me." Respondent emphasizes that they "both know what alcohol does" and that they "both learned [their] lesson" and not just Minor A.

Respondent's claim that he did nothing wrong regarding Minor A is further contradicted by his text message exchange with her on July 5:

Respondent: U want Wendy's?
Minor A: Yes, thank you.

Respondent: Text me what you want
Minor A: Can you get fries chicken nuggets not the spicy ones and burgers
and honey mustard
Respondent: Lol fat bastards
Minor A: Haha I know
Respondent: No more drinking
Minor A: Ever again in my life
Respondent: Just begging you please
Minor A: No more drinking for you either
Respondent: Nop Jua hope we good Done
Minor A: We are good
Respondent: K Thanx
Minor A: Your welcome

Since Respondent had awakened hours before to his wife screaming when she found Minor A in bed with him, it would not be surprising if Respondent had expressed anger at Minor A or chastised her for getting him in trouble with his wife. Instead he jokes with her, seeks assurances that they are “good,” and agrees not to drink anymore. These statements imply culpability for his own bad acts and not just Minor A’s drunkenness and/or inappropriate behavior.

The record includes additional circumstantial evidence that supports this tribunal’s finding that it is more likely than not that Respondent engaged in the charged misconduct. For example, this tribunal credits the testimony of Sergeant John Martinez, who conducted the IAB investigation and arrested Respondent [REDACTED] (Tr. 157, 165) Sergeant Martinez testified that Respondent was crying, tried to explain that “she came onto me,” and in the car said that he “thought she was 17.” (Tr. 166) This excited utterance referencing New York State’s age of sexual consent is quite telling. Although Respondent denied making reference to Minor A’s age at the time, Sergeant Martinez would have no motive to fabricate this incriminating statement.

Likewise, there is evidence to support Minor A's claim that Respondent showed her porn on the night in question. I credit the testimony of Sergeant Leon Lian who examined Respondent's computer hard drive for evidence. His findings included a visit to the website vporn.com at 0522 hours on the morning of July 5, 2013 and a confirmation that the site contains still and video images of adult porn. That the same website had been accessed from Respondent's computer on July 3, 2013 at 1206 hours and on July 4, 2013 at 0312 hours. Although the site was not a [REDACTED] [REDACTED] porn site, access at that time on July 5 supports Minor A's assertion that Respondent showed her pornography on the computer. More telling is the fact that Sergeant Lian credibly testified that the Twitter website had not been accessed that night. Respondent made a point to underscore that the girls must have gone on Twitter that night. In fact, Mrs. Ciollo testified that Twitter was on the computer screen when she arrived from work the morning of July 5. This testimony was presented, in part, to support Respondent's defense that he did not access the porn site and that Minor A must have opened vporn.com through his search history. Sergeant Lian's findings, however, lead this tribunal to conclude that Respondent's denial of the charge is not true. (Tr. 293-302, 318)

This tribunal is also concerned with two other specific assertions made by Respondent at trial which defy logic and fail to comport with common sense and general human experience. First, Respondents' version of events failed to satisfactorily account for why he met with Minor A at 2100 hours on July 4. Respondent testified that after he drove wife home at about 2100 hours on July 4, he then went to meet Minor A on Hyland Boulevard and Craig Avenue because Minor A had reached out to him to say that "she was in a fight with her friend." According to Respondent, they spoke for approximately

fifteen minutes alone in his car. He advised her “to relax; she’s known Minor B a long time. They’ll get over it.” He admits that Minor A asked him to purchase alcohol at that time, but denies that he bought it. (Tr. 337-339) This private rendezvous is troubling. It defies logic that a married adult would leave his wife at home to meet sixteen-year-old Minor A on a street corner at 2100 hours because she called to say she had an argument with her best friend. It is also strange that he seems to have done so without talking to his wife [REDACTED]. Moreover, Respondent’s purported reason for this rendezvous seems to be fabricated. By all accounts, [REDACTED], the argument between Minors A and B occurred at much later that night when they did not have a ride home and were at or walking toward the train station. [REDACTED], it was around midnight when Minor A called upset asking for a ride and talking about a fight with Minor B. (Tr. 311-313) Given these circumstances, Minor A’s account of the rendezvous seems more likely than Respondent’s version of events.

Second, Respondent admittedly got up out of bed in the middle of the night, went through his drawers and gave her a pair of shorts to wear because “she said she didn’t like the material of the clothing she had on.” (Tr. 352) Respondent testified that he accommodated Minor A’s clothing selection right after she propositioned him and he pushed her away. This sequence of events strikes this tribunal as odd. It is also worth noting that Respondent’s testimony supports Minor A’s testimony that she was wearing shorts when she was in bed with Respondent and contradicts Mrs. Ciollo’s testimony that Minor A was wearing her sweat pants on the morning of July 5 and not shorts. (Tr. 316-317)

The record provided other important clues to credibility. Although Minor B’s

testimony can be largely discounted because of her admitted collusion with Minor A the night before she testified, some aspects of her account are credited by this tribunal. First and foremost is the fact that Minor A reported the sexual assault on July 5. This is corroborated by the fact that Minor B reported Respondent's inappropriate behavior to [REDACTED] and subsequently to her father. In fact, the District Attorney began its investigation within days. The fact that Minor A reported the sexual assault so quickly after the incident, and that they were willing to follow through before this tribunal, is a factor that weighs in favor of Minor A's account about Respondent's misconduct, as well as Minor B's account that Respondent slapped her buttocks while asleep.

This tribunal also credited Minor B's account that during the night, while she was sleeping on the living room couch, she heard Respondent tell Minor A to go upstairs, heard Minor A tell Respondent "stop" and that she told Minor A to come back downstairs. (Tr. 223) Minor A complied and when she asked what they were doing upstairs, Minor A replied, "nothing." According to Minor B, Minor A grabbed a bottle of alcohol and started up the stairs. Minor B pleaded with her friend to "please stay with [her]" because she did not feel well, but Minor A said, "no" and told Minor B to stay downstairs. As Minor B was falling asleep she heard Respondent say how inconsiderate Minor A's mother was [REDACTED] (Tr. 225) This testimony was not corroborated by Minor A. Furthermore, it was not particularly flattering to Minor A and might even raise questions about Minor A's willingness to engage in at least part of the sexual activity that night. It is important to note, however, that actual consent is irrelevant in this case because Minor A was legally deemed incapable of consent: at the time she was younger than 17 years old and Respondent was 29 at the time. NYS Penal Law Art. 130

In sum, the logical conclusion to be drawn from the evidence is that Minor A's version of events was more persuasive than Respondents'. Accordingly, this tribunal finds Respondent Guilty of the misconduct set forth in Specifications 1, 2, 3, 4, 5, 9, 10 and 11 and having pled Guilty to Specification 7, is found Guilty. Respondent is found Not Guilty of the misconduct set forth in Specification 6.

Respondent is also found Guilty of the conduct charged in Specification 8 – failing to report his current physical home address to his commanding officer. Respondent testified that he had changed his residence temporarily due to a fire. Although he did inform the sick desk of this change, he failed to notify his commanding officer.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent was appointed as a member to the Department in January 2006. He sustained a line-of-duty knee injury in July 2011 and has been out on extended leave since August 2013. As a result, he has applied for a disability pension and his application has been approved by the Medical Division.

In this proceeding, however, Respondent has been found guilty of extremely serious misconduct involving sexual contact with a minor. These actions clearly bring discredit to the Department and undermine its ability to effectively carry out its mission.

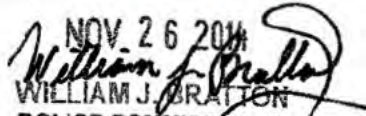
Based on the seriousness of Respondent's misconduct, and the high public trust police officers must fulfill, I recommend that Respondent be DISMISSED immediately from the New York City Police Department. This penalty is in line with precedent for similar violations. *Case No. 70966/96* (signed November 26, 1996) (four-year officer with no prior disciplinary record and average performance evaluation fired for off-duty sexual contact with a 14-year-old female); *Case No. 70810/96* (signed April 9, 1997; confirmed, 685 N.Y.S.2d 222 (First Dep't 1999)) (fifteen-year officer rated "highly competent to extremely competent" dismissed for soliciting sex from a 13-year-old boy while off duty).

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

NOV 26 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER PETER CIOLLO
TAX REGISTRY NO. 940009
DISCIPLINARY CASE NO. 2013-10065

Respondent was appointed to the Department on January 9, 2006. His last three annual evaluations were as follows: he received an overall rating of 3.0 "Competent" in 2012 and 2011, and a 3.5 "Highly Competent/Competent" in 2010. [REDACTED]

On July 10, 2013, he was placed on suspension/modified assignment as a result of this case and on August 12, 2013 he was assigned to the Military & Extended Leave Desk (MELD). He has no prior formal disciplinary record.

For your consideration.



Rosemarie Maldonado
Deputy Commissioner Trials